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SUBJECT: LAW ENFORCEMENT, PRISONS, AND JUSTICE IN MALI: A
VIEW FROM THE PROSECUTOR'S OFFICE

REF: 07 BAMAKO 00725

Classified By: Political Officer Fred Noyes, Embassy Bamako,
for reasons 1.4 (b) and (d).

¶1. (SBU) Summary: During a recent visit to detention centers in Bamako, Mali's Public Prosecutor for the Court of Appeals Mahamadou Boire met with staff and inmates to verify prison conditions, identify areas of concern, and propose potential solutions to the two most pressing problems facing Mali's penal system: overcrowding and excessive pretrial detention. In a follow-up meeting with the Embassy on February 3, Public Prosecutor Sombe Thera expounded upon these problems and attributed them to a lack of resources among Mali's judicial and law enforcement agencies. Boire and Thera agree that holding extraordinary sessions of Malian trial courts and relocating convicted criminals from Bamako to rural locales could ease overcrowding and shorten pretrial detention times, which in some cases stretch as long as 8 years. Thera emphasized that Mali requires outside assistance to increase the effectiveness of law enforcement during the investigation phase of a criminal prosecution.
End Summary.

The Fact-finding Mission

¶2. (SBU) On January 28 Mali's government-run newspaper, l'Essor, reported on a recent fact-finding mission by the Court of Appeals Public Prosecutor Mahamadou Boire to Bamako's Central Prison (MCA) and two other specialized detention centers in the Bamako area. Boire visited the prisons to meet with staff and inmates, verify prison conditions, and identify potential solutions to the problems facing the Malian penal system.

¶3. (SBU) The complaints passed on to Boire centered around two issues: prison overcrowding and unacceptably long pretrial detention before an accused's case is brought to trial. The MCA, for example, was built in 1950 by the French and was designed to house 400 to 500 prisoners. Today, it holds 1700. The overcrowding, while a concern by itself, also contributes to the spread of contagious ailments among the prisoners at MCA. Long pretrial wait times are also a source of frustration as many of the prisoners are uncertain of their ultimate fate. The l'Essor reported that some prisoners at MCA have been awaiting their day in court for as long as 8 years. The public prosecutor indicated that the government intended to address the problems facing the MCA by transferring some prisoners to facilities in other less crowded locales and by doubling the number of sessions held by Malian trial courts.

The Larger Context

¶4. (SBU) In a meeting with the Embassy on February 3, Public Prosecutor Sombe Thera expanded upon the reports in the Malian press. Thera began with an extensive overview of the structure of the Malian judicial system, explaining the division of responsibilities among the various courts, the accessibility of the courts and lawyers to ordinary Malians, and clarifying the extraordinary role of Justices of the Peace in the Malian system.

¶5. (SBU) Thera suggested that many Malians do not have access to quality legal representation when the need arises. When asked if this was because there were not enough trained lawyers in Mali, Thera replied that the number of lawyers was adequate, but that lawyers were disproportionately located in Bamako. A near total absence of trained lawyers in rural areas leaves most rural Malians unable to obtain legal representation when needed unless they have the means to hire a lawyer to travel from Bamako, which few do. Even in the capital, a large number of citizens lack the financial means to obtain legal advice, although the law does provide indigent defendants in criminal cases with a public defender.

¶6. (SBU) The shortage of lawyers in rural locales in part explains the extraordinary power given to Malian Justices of the Peace. In all urban areas covered by a trial court, the responsibilities of indictment, investigation and prosecution, and judgment are divided between the prosecutor, investigative judge, and presiding judge of the court, respectively. In rural areas not served by a trial court, the Justice of the Peace is authorized to fulfill all three roles, serving effectively as judge and jury for civil cases

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and minor crimes. Moreover, many Justices of the Peace are not lawyers, although Thera indicated they do usually have some legal training. By contrast, in order to become a "magistrate" and eligible for appointment as a judge, one must have a masters in law and two years of specialized training. There are only two checks upon the Justices of the Peace: their judgments are appealable to the Courts of Appeals, and they lack the jurisdiction to enter judgments in serious criminal matters.

Next Steps: Improving Justice

¶7. (SBU) Regarding the problems that were reported in the Malian press and the subject of Boire's prison visits, Thera explained that the cause was primarily demographic in nature. Simply put, the city of Bamako has seen explosive population growth in recent years which has strained the judicial system and contributed both to trial delays and overcrowding of the MCA prison. While the population of Bamako has continued to grow, the government has lacked the fiscal resources to expand or replace Bamako's aging MCA.

¶8. (SBU) Thera pointedly emphasized that the problems witnessed at MCA are not system-wide. According to Thera, Bamako's two specialized prisons - one for women and one for minors - are not overcrowded. Moreover, prisons in localities outside of Bamako have plenty of extra space. It is for this reason that the government is promoting a plan to move prisoners who have already been tried and convicted to facilities in other regions.

¶9. (SBU) As for lengthy periods of pre-trial detention, Thera was confident that holding extra-ordinary sessions of trial courts and the Courts of Appeal would enable the backlog in the courts' dockets to be eliminated, and would allow trials to be held in a timely period. When asked what entity possessed the authority to require extra-ordinary sessions of the courts, Thera indicated that it could be accomplished internally; that the power rested with the Presiding Judge acting in agreement with the Prosecutor's

Office.

¶10. (SBU) Thera also explained that Malian law places limits on the time period in which an accused can be held without having a day in court. Specifically, for misdemeanors, defendants can be held legally for only six months, one time renewable, prior to trial or they must be released. For felonies, defendants can be held legally for three years before being entitled to immediate trial or immediate release. When asked how it was possible, then, that MCA had prisoners who had been held without trial for up to 8 years, Thera indicated it was a "dysfunction" of the system - that legally, those individuals should have been freed. Thera said that all systems break down from time to time, and that the Malian legal system moves much faster than that of neighboring countries and even France.

¶11. (SBU) Thera was very careful to emphasize the strengths of the Malian legal system while admitting its flaws. He demonstrated great pride, for example, in the rehabilitative programs in place at Bamako's women's and minors' detention centers, which teach inmates trades such as masonry. Thera emphasized that Mali has done a great deal considering its meager resources. Thera admitted, however, that there remain troubling flaws. "The law is not an exact science," Thera explained, "but Justice is what we aspire to every day."

Opportunities for Cooperation in Training/Equipment

¶12. (SBU) Thera indicated that apart from specific clauses in Mali's constitution regarding human rights, Mali is party to international treaties that obligate it to provide a modicum of decent treatment to prisoners in its penal system. Thera stated that, despite Mali's limited means, it would like to be a model in the area of criminal justice. Thera seemed committed to transparency, welcoming the activities of NGO's and of the press as a means of "creating the political will" necessary to commit resources to improve prison conditions and eliminate long pretrial detention.

¶13. (SBU) Thera also stressed Malian law enforcement's evident lack of criminal forensics technology necessary to effectively investigate and prosecute crimes. "Fingerprints are better than witness testimony," he said, before noting that Malian police and prosecutors rely almost solely on

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witness testimony due to lack of fingerprints, ballistics, or DNA testing equipment.

Comment: A Question of Will

¶14. (C) The Malian justice system is hampered both by a lack of means and a lack of will. The lack of trained lawyers in rural areas not only effectively denies a large portion of Mali's citizens access to the courts, but exacerbates the problems posed by the Justices of the Peace, whose broad authority can lead to arbitrary and unchecked decisions. Even in Bamako it is doubtful that defendants in criminal cases receive truly effective representation - the continued imprisonment of suspects after 8 years of pretrial detention when the law commands their release after only three may very well be a malfunction of the system, as Thera described it, but it is a malfunction which would be simply impossible if the individuals in question were represented by capable and attentive attorneys able to bring the matter to the attention of the courts. Thera's claim that Mali will soon solve the dual problems of pretrial detention and overcrowding in the Bamako prison by holding extraordinary sessions and relocating excess inmates to rural locales is a bit overly optimistic.

¶15. (C) When inspired to do so, the Malian judiciary can act with near lightening speed. One prominent example was the hastily arranged prosecution (led by Sombe Thera), trial, and conviction of four journalists and one high school teacher in 2007 for "offending" the Head of State (Reftel). Unfortunately, this sense of urgency does not extend to the ordinary cases that have apparently been piling up for years.

None of the problems identified by Thera and Boire are new and none of the potential solutions are ground breaking. The Malian government could have begun transporting prisoners from the overcrowded MCA in Bamako to other less populated facilities years ago, yet it has not done so. Malian courts, which have the ability to set the number of sessions they hold, have allowed Mali's backlog to grow without attempting to take any corrective measures.

¶16. (C) Thera did not explain what has changed in the political calculus to provide the will for action that previously was so evidently lacking. We have, however, no reason to doubt Thera and Boire's sincerity and believe it important for us to continue to explore ways in which the USG can support Mali's attempt to improve its judicial system.

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